IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS No 536 & 537 of 2001

in

SPECIAL CIVIL APPLICATIONNo 150 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALKESHWAR COOPERATIVE HOUSINGSOCIETY LTD.

Versus

PRAHLADBHAI PRABHUDAS PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 536 of 2001

MR AJ PATEL for Appellant

MR JAYANT PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2,8-10

Mr R R Marshall for Respondent No.6

MR H H Patel, AGP for respondent No.7

2. LPA No.537 of 2001
Mr Shalin N Mehta for appellant
Mr Jayant Patel for respondent no.1
Mr R R Marshall for respondent no.6
Mr H H Patel, AGP for respondent no.7

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 04/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Admit. Learned Advocates appearing for the respective respondents waive service of notice of admission and at the request of the learned Advocates for the parties, these appeals are finally heard today.

2. These appeals have been filed against an interim order passed in Special Civil Application No.150 of 2001 with C.A. No.1257 of 2001. By virtue of the interim relief granted on 19.6.2001, which is the subject matter of these appeals, the learned Single Judge has confirmed the ad-interim relief which was granted in Special Civil Application No.150/2001 on 10.1.2001 in terms of para 8(C) of the petition. Para 8 (C) of the said petition reads as under:

"(C) Pending the admission and final hearing of this petition, an interim injunction may kindly be issued, restraining the first respondent, its agents and servants from removing any seals and the security over the basement and shops at the ground floor level and the flats on the 4th floor level."

3. The facts giving rise to Special Civil Application No.150 of 2001 in a nutshell are as under:

The petitioners in Special C.A. No.150 of 2001 are some of the members of respondent No.6-Valkeshwar Cooperative Housing Society Ltd. (for short, 'the Society'). The petitioners approached this Court when they apprehended that AUDA was likely to remove its seal

which it had put up on some unauthorised or illegal construction which was put up either by the respondent-Society or by its developers. After hearing the concerned learned Advocates, the learned Single Judge has granted interim relief in terms of para 8 (C) whereby AUDA has been restrained from removing the seal put up by it.

4. These two appeals have been filed by the Valkeshwar Cooperative Housing Society Ltd. and Dhanalakshmi Enterprises and its partners, who are developers of the said Society. Learned Advocates appearing for the appellants, who are the original respondents in the petition, have contended that the respondent-Society has submitted an application to AUDA for regularisation of the illegal or irregular construction put up by the society or its developers. If the seal put up by AUDA is not removed, it would not be possible for AUDA to have site inspection and to consider the application given by the Society for regularisation. It has been, therefore, submitted that the interim relief which has been granted by this Court by the learned Single Judge should be vacated by allowing the appeals.

5. On the other hand, learned Advocate Mr Jayant Patel appearing for the original petitioners has submitted that the construction has been put up by the Society in violation of the rules and regulations with regard to the building construction. It has also been submitted by him that some persons who are not in fact members of the Society, have represented themselves to be members of the society and, therefore, such persons who are in fact not members of the society, should not be permitted to put up any construction or to act as members of the Society. At present we are not concerned with any of the submissions with regard to membership of the society and, therefore, we do not deal with the averments which have been made with regard to the membership of the society.

6. Looking to the facts of the case, in our opinion, the problem which has been raised at this stage can be resolved by permitting AUDA to remove the seal for some period during which the officers of AUDA can have inspection of the construction which is illegal. It is not in dispute that the original petitioners are objecting to regularisation of the construction in question. Looking to the said fact, in our opinion, it would be proper if officers of AUDA give notice to the petitioners so that the petitioners can also remain present and point out the illegalities committed in the

construction and state the reasons as to why the application made by the society for regularisation should not be granted. AUDA should also give notice to other concerned respondents like the office bearers of the society and the developers at the time when the representative of AUDA proposes to visit the place of construction in question.

7. In the circumstance, we permit AUDA to open the seal put up by it on the construction in question for the purpose of inspecting the same so as to enable AUDA to decide whether the application for regularisation of illegal construction can be entertained. AUDA will decide the day on which it proposes to have the inspection. The seal shall be opened in presence of a responsible officer of AUDA and the construction shall be inspected by AUDA in presence of the concerned respondents and the original petitioners. AUDA will give at least one week's prior notice giving details about the date and time when the seal is to be opened, to the concerned parties before opening the seal and having inspection. If any of the parties are not present, it would be open to the officers of AUDA to have an inspection in presence of the parties who are present. If any objections are given by any of the parties, AUDA shall look into it at the time of taking a final decision on the application for regularisation. Immediately after the inspection is over, the illegal construction which has been sealed at present, shall be sealed again. Needless to say that this order is passed without prejudice to the rights and contentions raised by the concerned parties in the petition which is pending before the learned Single Judge.

8. In view of the above directions, these appeals are allowed to the above extent with no order as to costs.

4.9.2001 [A R Dave, J.]

msp [D P Buch, J.]